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4 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
5 REGION 10

6 IN THE MATTER OF:

7 Hamilton/LaBree Roads Ground Water
8 Contamination Superfund Site
9 EPA Site I.D. #10-6S

U.S. EPA Docket No. CERCLA-10-2002-0002

10 S. C. BREEN CONSTRUCTION COMPANY
11 c/o Tod A. Gold
12 Ogden Murphy Wallace, P.L.L.C.
13 1601 Fifth Avenue, Suite 2100
14 Seattle, Washington 98101

15 RESPONDENT.

16 Proceeding Under Sections 104, 122(a), and
17 122(d)(3) of the Comprehensive
18 Environmental Response, Compensation, and
19 Liability Act, as amended, 42 U.S.C §§ 9604,
20 9622(a), and 9622(d)(3).

21 ADMINISTRATIVE ORDER ON CONSENT
22 FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

23 I. INTRODUCTION

24 1. This Administrative Order on Consent (“Consent Order” or “Order”) is entered into
25 voluntarily by the United States Environmental Protection Agency (“EPA”) and the S. C. Breen
26 Construction Company (“Respondent”). The Consent Order concerns the preparation of,
27 performance of, and reimbursement for certain costs incurred by EPA in connection with a Remedial
28 Investigation and Feasibility Study (RI/FS) for the Local Aquifer Systems portion of the
Hamilton/LaBree Roads Ground Water Contamination Superfund Site. The term “Local Aquifer
Systems” is defined in this Order and in the attached Statement of Work. The Site is located
generally at the intersection of Hamilton Road North and LaBree Road, and to the east-southeast

1 along and near Hamilton Road North and Berwick Creek, both of which are located south of the city
2 of Chehalis, Washington (hereinafter, the "Site").

3 II. JURISDICTION

4 2. This Consent Order is issued under the authority vested in the President of the United
5 States by Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response,
6 Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9622(a), and
7 9622(d)(3). This authority was delegated to the Administrator of EPA on January 23, 1987, by
8 Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators
9 on September 13, 1987, by EPA Delegation No. 14-14-C. This authority has been redelegated by the
10 Regional Administrator to the Director, Office of Environmental Cleanup, by EPA Region 10
11 Regional Delegation No. R10-14-14-C.

12 3. Respondent agrees to undertake all actions required by the terms and conditions of this
13 Consent Order. In any action by EPA or the United States to enforce the terms of this Consent
14 Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the Regional
15 Administrator to issue or enforce this Consent Order, and agrees not to contest the validity of this
16 Order or its terms.

17 III. PARTIES BOUND

18 4. This Consent Order shall apply to and be binding upon EPA and shall be binding upon
19 Respondent, its agents, successors, assigns, officers, directors, and principals. Respondent is
20 responsible for carrying out all actions required of it by this Consent Order. The signatories to this
21 Consent Order certify that they are authorized to execute and legally bind the party they represent to
22 this Consent Order. No change in the ownership or corporate status of Respondent or of the facility
23 or Site shall alter Respondent's responsibilities under this Consent Order.

24 5. If the S. C. Breen Construction Company is acquired by or transferred to another entity,
25 Respondent shall provide a copy of this Consent Order to the subsequent owner(s) or successor(s)
26 before ownership rights or stock or assets are transferred. Respondent shall provide a copy of this
27 Consent Order to all contractors, subcontractors, laboratories, and consultants which are retained to
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1 conduct any work performed under this Consent Order, within fourteen (14) days after the effective
2 date of this Consent Order or the date of retaining their services, whichever is later. Respondent
3 shall condition any such contracts upon satisfactory compliance with this Consent Order.
4 Notwithstanding the terms of any contract, Respondent is responsible for compliance with this
5 Consent Order and for ensuring that its subsidiaries, employees, contractors, consultants,
6 subcontractors, agents, and attorneys, to the extent these entities or persons are associated with the
7 Site, comply with this Consent Order.
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9 IV. STATEMENT OF PURPOSE

10 6. In entering into this Consent Order, the objectives of EPA and Respondent are: (a) to
11 determine the nature and extent of contamination and any threat to the public health, welfare, or the
12 environment caused by the release or threatened release of hazardous substances, pollutants, or
13 contaminants at or from the Local Aquifer Systems by conducting an RI; (b) to determine and
14 evaluate alternatives for remedial action (if any) to prevent, mitigate, or otherwise respond to or
15 remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or
16 from the Local Aquifer Systems by conducting an FS; (c) to define the extent to which releases from
17 property currently or formerly owned by the Respondent (hereinafter, “the Breen Property”) and
18 releases from other sources, including but not limited to the Hamilton Road Impacted Area, have
19 impacted the Local Aquifer Systems; (d) to operate and maintain the wellhead treatment system at
20 the Thurman property located at 169 LaBree Road; (e) to identify and recommend potential interim
21 response action(s) regarding source control and/or plume reduction for the Local Aquifer Systems;
22 and (f) to recover response and oversight costs incurred by EPA with respect to this Consent Order.
23 For purposes of this Order, the terms “Local Aquifer Systems” and “Hamilton Road Impacted Area”
24 are defined in this Order and in the Introduction to the attached Statement of Work.
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1 7. Unless information is discovered indicating that Respondent is liable for cleanup of the
2 tetrachloroethylene (“PCE”) in the Hamilton Road Impacted Area and/or at the United Rentals
3 Property, EPA will retain responsibility for the investigation and cleanup of the source(s) of PCE
4 within the Hamilton Road Impacted Area and/or at the United Rentals Property.
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6 8. This Order does not require the Respondent to conduct an RI/FS for the “deep aquifer”
7 located beneath the shallow aquifer at the Site because all groundwater samples taken to date, except
8 one groundwater sample collected from PW-6, have not detected concentrations of hazardous
9 substances in the deep aquifer. However, EPA and Respondent understand and agree that if
10 continued monitoring of the deep aquifer demonstrates that concentrations of hazardous substances
11 are migrating to the deep aquifer from a source on the Breen Property, or from a source at the Site
12 which EPA determines the Respondent is liable for under CERCLA, then EPA and Respondent will
13 discuss the need for additional RI/FS work as set forth in Paragraph 50 below. If, after these
14 discussions, EPA determines that “additional work” is necessary, then the SOW will be modified as
15 appropriate.
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17 9. The activities conducted under this Consent Order are subject to approval by EPA and
18 shall provide all appropriate, necessary information for the RI/FS for the Local Aquifer Systems in
19 accordance with the Statement of Work (“SOW”) and for a Record of Decision that is consistent
20 with CERCLA and the National Oil and Hazardous Substance Pollution Contingency Plan (“NCP”),
21 40 C.F.R. Part 300. The activities conducted under this Consent Order shall be conducted in
22 compliance with all applicable EPA guidance, policies, and procedures.
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24 V. DEFINITIONS

25 10. Unless otherwise expressly provided herein, terms used in this Order that are defined in
26 CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in
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1 CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the
2 attachments hereto and incorporated hereunder, the following definitions shall apply:

3 a. "Breen Property" shall mean the real property currently or formerly owned by the
4 Respondent at the Site, and as further described in Attachment A to this Order.

5 b. "CERCLA" shall mean the Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

7 c. "Day" shall mean a calendar day. In computing any period of time under this
8 Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run
9 until the close of business of the next working day.

10 d. "Ecology" shall mean the State of Washington Department of Ecology and any
11 successor departments or agencies of the State.

12 e. "Effective Date" shall be the effective date of this Order as provided in Section
13 XXVII.

14 f. "EPA" shall mean the United States Environmental Protection Agency and any
15 successor departments or agencies of the United States.

16 g. "Future Response Costs" shall mean all costs, including, but not limited to, direct
17 and indirect costs, that the United States incurs after the effective date of this Order in reviewing or
18 developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise
19 implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs,
20 contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 62 (costs and
21 attorneys fees and any monies paid to secure access, including the amount of just compensation),
22 Paragraph 47 (baseline risk assessment), and Paragraph 50 (additional work).

23 h. "Hamilton Road Impacted Area" shall mean the area depicted in Attachment B to
24 this Order.

25 i. "Interest" shall mean interest at the rate specified for interest on investments of the
26 EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on
27 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall
28 be the rate in effect at the time the interest accrues. The rate of interest is subject to change on
October 1 of each year.

j. "Local Aquifer Systems" shall mean surface water that is in communication with a
shallow aquifer that is defined as the water-bearing zone from ground surface to a thick silt and clay
aquitard at a depth of approximately 50 feet below ground surface ("bgs"), and a deep aquifer that
underlies the aquitard. The Local Aquifer Systems shall include surface water and groundwater in
the shallow and deep aquifers within the Hamilton Road Impacted Area (except for the source of
PCE within the Hamilton Road Impacted Area and possible sources at the United Rentals Property),
surface water and groundwater in the shallow and deep aquifers and source areas on the Breen

1 Property, and surface water and ground water in the shallow and deep aquifers which is down
2 gradient and/or cross gradient from the Breen Property and the Hamilton Road Impacted Area.

3 k. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous
4 Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C.
§ 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

5 l. "Order" shall mean this Administrative Order on Consent and all attachments
6 hereto. In the event of conflict between this Order and any attachment, this Order shall control.

7 m. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

8 n. "Parties" shall mean EPA and Respondent.

9 o. "Past Response Costs" shall mean all costs, including, but not limited to, direct and
10 indirect costs, that the United States paid at or in connection with the Site through the effective date
of this Order, plus Interest on all such costs.

11 p. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§
12 6901, et seq. (also known as the Resource Conservation and Recovery Act).

13 q. "Respondent" shall mean the S.C. Breen Construction Company.

14 r. "Section" shall mean a portion of this Order identified by a Roman numeral.

15 s. "Site" shall mean the Hamilton/LaBree Roads Ground Water Contamination
16 Superfund Site, which includes the Breen Property and the Hamilton Road Impacted Area, all source
17 areas of PCE located on the Breen Property, in the Hamilton Road Impacted Area, and in the general
18 vicinity of the intersection of Hamilton Road North and LaBree Road, and all areas where the PCE
19 groundwater plume attributable to these source areas has come to be located. The Site is generally
located at the intersection of Hamilton Road North and LaBree Road, approximately 3 miles south of
Chehalis, Lewis County, Washington, depicted generally on the map attached as Attachment C.

20 t. "State" shall mean the State of Washington.

21 u. "Statement of Work" or "SOW" shall mean the statement of work for
22 implementation of the Remedial Investigation and Feasibility Study, as set forth in Attachment D to
this Order, and any modifications made thereto in accordance with this Order.

23 v. "United Rentals Property" shall mean the area depicted in Attachment B to this
24 Order.

25 w. "Waste Material" shall mean: i) any "hazardous substance" under Section 101(14)
26 of CERCLA, 42 U.S.C. § 9601(14); ii) any "pollutant or contaminant" under Section 101(33) of
CERCLA, 42 U.S.C. § 9601(33); iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C.
27 § 6903(27); and iv) any "hazardous substance" under Section 70.105D.020 of the Revised Code of
28 Washington ("RCW").

1 x. "Work" shall mean all activities Respondent is required to perform under this
2 Order.

3 VI. FINDINGS OF FACT

4 EPA makes the following Findings of Fact, which Respondent neither admits nor denies:

5 11. The Hamilton/LaBree Roads Ground Water Contamination Superfund Site is located in
6 the general vicinity of the intersection of Hamilton Road North and LaBree Road, and along
7 Hamilton Road North east -southeast of the intersection of Hamilton and LaBree Roads, both of
8 which are located just south of the city of Chehalis, Lewis County, Washington. The
9 Hamilton/LaBree Roads Ground Water Contamination Superfund Site consists of at least two
10 distinct source areas: the property currently and/or formerly owned or operated by Respondent,
11 which is located northeast of the intersection of Hamilton Road North and LaBree Road (herein
12 referred to as the "Breen Property"), and an area located in the vicinity of Hamilton Road across
13 from the United Rental facility (herein referred to as the "Hamilton Road Impacted Area"). In very
14 generalized terms, the Hamilton-LaBree Roads Ground Water Contamination Superfund Site
15 encompasses all source areas of PCE in the general vicinity of the intersection of Hamilton Road
16 North and LaBree Road, and all areas where the PCE groundwater plume attributable to these source
17 areas has come to be located. Shallow and deep aquifers underlie the Site, and these aquifers are
18 source(s) of drinking water for numerous residences and businesses in the area.

19 12. The Site lies within the Newaukum River Valley, adjacent to Berwick Creek. The area
20 in the vicinity of the Site is underlain by 30 to 35 feet of poorly sorted gravel with varying amounts
21 of fine to medium sand in a matrix of silt, a trace of clay, and occasional cobbles. Interbedded in the
22 gravel are several silt lenses ranging in thickness from 1 to 7 feet and which are discontinuous across
23 the Site. Thirty to 45 feet below ground surface ("bgs") are poorly sorted fine to medium sands with
24 silt, little to some fine to medium gravels and trace cobbles. At the base of the sand unit, a bluish-
25 gray, clayey silt layer is encountered, at depths of about 45 to 48 feet bgs. This bluish-gray clay
26 layer probably serves as an aquitard below the shallow aquifer at the Site. The shallow aquifer is
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1 encountered from 0.5 to 8.8 feet bgs at the Site, and the groundwater flow in this shallow aquifer is
2 generally to the west and northwest.

3 13. PCE contamination was first detected in 1993 when a business along Hamilton Road
4 pursued approval of a public water system application for a commercial well. Test results showed
5 concentrations of PCE at 122 parts per billion (“ppb”). In 1993 and 1994, the state of Washington
6 Department of Health (“DOH”) detected concentrations of PCE in water samples collected from six
7 shallow water supply wells at the Site, ranging from 3 ppb to 2,165 ppb. The highest concentration
8 of PCE was detected in a water sample collected from a water supply well located at 169 LaBree
9 Road.

10 14. PCE is a chemical commonly used as a solvent in metal degreasing and cleaning
11 operations, dry cleaning, and other industrial uses. PCE is a “hazardous substance” as defined in
12 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The established Maximum Contamination
13 Level (“MCL”) for PCE in groundwater that is a source of drinking water is 5 micrograms per liter,
14 or 5 ppb. See 40 CFR § 141.61.

15 15. By letter dated June 28, 1994, the Lewis County Department of Health Services
16 informed residents and businesses located near the Hamilton-LaBree Roads intersection that
17 concentrations of PCE had been detected in five water supply wells and advised them to obtain
18 alternate sources of drinking water. Ecology started supplying bottled drinking water for some
19 families and businesses in the area around this time. Ecology also installed a water treatment system
20 at the water supply well located at 169 LaBree Road.

21 16. In 1996, DOH re-sampled the water supply wells that had detected concentrations of
22 PCE in samples collected in 1994. Analytical results of groundwater samples collected from five
23 water supply wells in 1996 detected concentrations of PCE slightly above the concentrations
24 detected in 1993 or 1994. In 1997, Ecology installed four new groundwater monitoring wells in the
25 vicinity of Hamilton and LaBree Roads. Later in 1997, Ecology installed four additional new
26 groundwater monitoring wells. PCE was detected at concentrations ranging from non-detect to
27 1,500 ppb.
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1 17. Ecology concluded in its 1997 Phase I and Phase II Data Presentation Report (“1997
2 Ecology Report”) that the groundwater PCE concentration data seemed to indicate that at least two
3 sources contributed to the release of PCE at the Hamilton-LaBree Superfund Site. The 1997
4 Ecology Report stated that groundwater flow direction appears to be west-northwest. It also stated
5 that shallow groundwater gradient, relatively flat surface topography, dispersion characteristics of
6 PCE and the aquifer, and residential and irrigation well use in the area all contributed to the
7 widespread distribution of PCE in groundwater.

8 18. In 1998, Ecology continued to collect and analyze groundwater samples from the
9 monitoring wells and the contaminated private water supply wells on a quarterly basis. In addition,
10 in March/April of 1998, Ecology collected shallow and deep groundwater samples using 28
11 temporary borings. Some of the borings were drilled at the northern portion of the Breen Property.
12 In January 1999, Ecology released a Source Investigation Report (“1999 Ecology Report”). Ecology
13 concluded that elevated levels of cis-dichloroethylene (“cis-DCE”) and vinyl chloride, but not PCE,
14 were detected in the top of the shallow aquifer and downgradient of a suspected source area on the
15 Breen Property at concentrations of 610 ppb and 280 ppb, respectively. Ecology also discovered
16 elevated levels of PCE (10.4 ppb) at the bottom of the shallow aquifer at this location. Cis-DCE and
17 vinyl chloride are daughter or degradation products of PCE.¹ Detection of cis-DCE and vinyl
18 chloride and PCE suggested the possibility of an older PCE release that is degrading into its daughter
19 products. The 1999 Ecology Report also concluded, based on available data, that the absence of
20 contamination in upgradient borings and the detection of contamination in downgradient borings on
21 the Breen Property suggests that a contaminant source is on the Breen Property. The highest PCE
22 concentration of 60,000 ppb, however, was detected in a groundwater sample collected from the top
23 of the shallow aquifer in Strataprobe Boring B2 located between Berwick Creek and Hamilton Road
24 about 40 feet from the High Reach property, which is apparently upgradient to the Breen Property.
25 TCE (15 ppb) and Cis-DCE (4.5 ppb) were also detected in that sample from Boring B2. Other
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28 ¹ The MCL for cis-DCE is 70 ppb and for vinyl chloride is 2 ppb.

1 samples taken at this location show elevated levels of PCE as well. The 1999 Ecology Report
2 suggests that this indicated the presence of a major PCE source in this vicinity.

3 19. At the same time it was investigating the Site, Ecology was also interviewing people
4 who may have had knowledge regarding the potential source of contamination on the Breen
5 Property. Some interviewees stated that the surplus store on the Breen Property used to sell
6 containers of chemicals. Some interviewees also recalled that a large pit had been dug in the early
7 1980s on the Breen Property. Interviewees also stated that construction equipment was cleaned,
8 possibly with solvents, on a wash pad located to the south of the construction company maintenance
9 facility. The wash water runoff from the pad may have discharged to an adjacent trench or settling
10 pit. Representatives of S. C. Breen Construction Company did not participate in these interviews.
11 Mr. S. C. Breen, President of S. C. Breen Construction Company, which owned and operated the
12 Breen Surplus store and the S.C. Breen Construction Company on the Breen Property, died in 1993.

13 20. S. C. Breen Construction Company owns real property in the vicinity of the intersection
14 of Hamilton Road North and LaBree Road. Formerly located on the Breen Property were a surplus
15 store and surrounding area (currently the location of Bulldog Trailer Manufacturing) and a
16 maintenance shop and surrounding area (currently being leased to other entities).

17 21. S. C. Breen Construction Company signed Agreed Order No. DE 99TC-S221 with
18 Ecology on August 6, 1999. Under the Agreed Order, S. C. Breen Construction Company
19 performed investigations at the Breen Property, including geophysical surveys to locate buried
20 materials. Based on the results of an electromagnetic survey, buried drums were located beneath the
21 Bulldog Trailer Building. Three layers of 55-gallon drums were found to a depth of 10 feet bgs. A
22 total of sixty-six 55-gallon drums, four 30-gallon drums, and several 1- to 5-gallon containers were
23 excavated from the Breen Property. The results of the electromagnetic survey indicated other
24 anomalies elsewhere on the Breen Property in addition to the buried drums under the Bulldog Trailer
25 Building.

26 22. Most of the drums were not opened or sampled. It was observed, however, that some of
27 the drums contained a black viscous sludge and/or water. Samples were collected from two drums.
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1 The analytical results of the sludge and/or water samples showed concentrations of PCE at 8,630 ppb
2 in a sample of water from one of the drums, 1,1,1 – trichloroethane (“1,1,1 –TCA”) at 2,100 parts
3 per million (ppm) in a sample of sludge from one of the drums, methylene chloride at 1,270 ppb
4 (water sample), and several other volatile organic compounds, including several of PCE’s
5 degradation products, including cis-1,2-dichloroethene at 4,470 ppb (water), trichloroethene at 4,140
6 ppb (water), and vinyl chloride at 2,760 ppb (water). The drums were transported off-site for
7 disposal as dangerous waste pursuant to the state of Washington’s Dangerous Waste regulations.

8 23. EPA proposed adding the Site to the National Priorities List (“NPL”), established
9 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, by publication on May 11, 2000, of the
10 proposal in the Federal Register at 65 Fed. Reg. 30,489. The Site was finalized on the NPL on
11 July 27, 2000 (65 Fed. Reg. 46,096). In background documents associated with the NPL listing,
12 EPA agreed with Ecology’s statements that at least two sources appeared to be contributing to PCE
13 contamination at the Site.

14 24. Since July 2000, EPA Region 10’s Emergency Response Group has been conducting a
15 removal site investigation at the Hamilton Road Impacted Area. This effort has consisted of a file
16 review, collection of soil samples from the near surface, installation of groundwater monitoring
17 wells and collection of groundwater samples from those new wells and existing wells, as well as
18 drilling soil borings and collection of subsurface soils samples. This recent work has confirmed the
19 results of previous investigations done in the Hamilton Road Impacted Area that there is a source of
20 PCE to groundwater located between Hamilton Road North and southwest of Berwick Creek, and
21 further delineated the nature and extent of the impacted area. Soil samples collected from depths of
22 40 to 48 feet bgs contained concentrations of PCE ranging from 8,000 ppb at a location north of the
23 United Rentals Property to 53,000 ppb at a location east of the United Rentals Property.
24 Groundwater analytical results indicated that 20 of the 24 groundwater monitoring wells sampled
25 exceeded the acceptable drinking water level for PCE in groundwater. The results of EPA’s and
26 Ecology’s investigations at the Site indicate that the PCE-contaminated groundwater plume at the
27 Site has more than one source.
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1 25. The highest concentrations of PCE detected in groundwater at certain locations within
2 the Site include the following:

3 (a) Breen Property: 2,000 ppb PCE (1998 sample in washpad area from MW-8);

4 (b) Hamilton Road Impacted Area: 190,000 ppb PCE (1996 sample from GP-1
5 located across from the United Rentals Property); and

6 (c) Other Area: 3,740 ppb PCE (1999 sample from well located at 169 LaBree Road,
7 adjacent to the Breen Property).

8 26. Eight shallow drinking water wells are located within ¼ mile of the intersection of
9 Hamilton Road North and LaBree Road, and 252 wells are located within a 4-mile radius of the Site.
10 All of these wells are screened in the shallow aquifer. In addition, four drinking water wells are
11 located in the deep aquifer within ¼ mile of the intersection of Hamilton Road North and LaBree
12 Road.

13 27. As evidenced by the presence of PCE and its breakdown chemicals in the soils and in the
14 shallow aquifer at the Site, there has been an actual release of a hazardous substance into the
15 environment at the Site. Potential exposure pathways from the release of hazardous substances
16 found at the Site include, but are not limited to, the following:

17 (a) Hazardous substances exist in the shallow aquifer at the Site and may be ingested
18 by humans by use of the aquifer as a drinking water source, and humans may be exposed to such
19 substances either through inhalation or dermal contact while showering or bathing, or from
20 accumulation of such hazardous substances within the basements and crawlspaces of homes and
21 structures located above the shallow aquifer at the Site; and

22 (b) Hazardous substances exist in the surface and subsurface soils at the Site, and
23 humans or biota may be exposed through ingestion and/or dermal contact.

24 28. Exposure to hazardous substances such as PCE can lead to adverse human health effects.
25 PCE is a suspected human carcinogen. In addition, PCE may cause central nervous system
26 depression, respiratory and digestive tract irritation, and liver and kidney damage.

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VII. CONCLUSIONS OF LAW AND DETERMINATIONS

EPA makes the following Conclusions of Law and Determinations which Respondent neither admits nor denies:

29. The Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

30. Wastes and constituents thereof at the Site identified in Paragraphs 13, 14, 18, and 22 above are “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute “any pollutant or contaminant” that may present an imminent and substantial danger to public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1).

31. The presence of hazardous substances at the Site or the past, present, or potential migration of hazardous substances currently located at or emanating from the Site constitute actual and/or threatened “releases” as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

32. Respondent is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

33. Respondent is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.

34. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation. See 42 U.S.C. §§ 9604(a)(1) and 9622(a).

VIII. NOTICE

35. By providing a copy of this Consent Order to the state, EPA is notifying the State of Washington Department of Ecology (“Ecology”) that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order. Ecology does not object to issuance of this Order.

IX. WORK TO BE PERFORMED

36. Respondent has selected Farallon Consulting, L.L.C. (“Farallon”) as its contractor. All work performed under this Consent Order shall be under the direction and supervision of Farallon.

1 Within thirty (30) days of the effective date of this Order, and before the work outlined below
2 begins, Farallon shall notify EPA, in writing, of the names, titles, and qualifications of the personnel,
3 including other contractors, subcontractors, consultants, and laboratories, to be used in carrying out
4 such work. The qualifications of the persons undertaking the work for Respondent shall be subject
5 to EPA's review for verification that such persons meet minimum technical background and
6 experience requirements. This Order is contingent on Respondent's demonstration to EPA's
7 satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in
8 this Consent Order. If EPA disapproves, in writing, of any person's technical qualifications,
9 Respondent shall notify EPA of the identity and qualifications of the replacement(s) within thirty
10 (30) days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA
11 reserves the right to terminate this Order, conduct a complete RI/FS, and seek reimbursement for
12 costs and penalties from Respondent. Respondent reserves the right to oppose EPA's attempt to
13 recover such costs incurred after EPA terminates this Order. During the course of the RI/FS,
14 Respondent shall notify EPA, in writing, of any changes or additions in the personnel used to carry
15 out such work, providing their names, titles, and qualifications. EPA shall have the same right to
16 review and disapprove changes and additions to personnel as it has hereunder regarding the initial
17 notification.

18 37. Respondent shall conduct activities and submit deliverables to EPA as provided by the
19 attached RI/FS SOW, which is incorporated by reference into this Consent Order, for the
20 development of the RI/FS. All such work shall be conducted in accordance with CERCLA, the
21 NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting
22 Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01),
23 "Guidance for Data Usability in Risk Assessment" (OSWER Directive # 9285.7-05) and guidance
24 referenced therein, and guidance referenced in the SOW, as may be amended or modified by EPA.

25 38. All work performed under this Consent Order shall be in accordance with the schedules
26 herein, and in full accordance with the standards, specifications, and other requirements of the SOW
27 and deliverables approved thereunder, and as may be amended or modified by EPA from time to
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1 time in accordance with Section XI below. The list of deliverables and their corresponding schedule
2 for completion/submission is located at the end of the SOW.

3 39. EPA reserves the right to comment on, modify, and direct changes for all deliverables.
4 At EPA's discretion, Respondent must fully correct all deficiencies and incorporate and integrate all
5 information and comments supplied by EPA either in subsequent or resubmitted deliverables. If
6 EPA disapproves of, or requires revisions in whole or in part, to any deliverable or submittal
7 identified in the Statement of Work as a "major deliverable" or "major submittal" from Respondent,
8 the Respondent shall amend and submit to EPA a revised submittal or deliverable which is
9 responsive to the directions in all EPA comments within twenty-one (21) days of receiving EPA's
10 comments. If EPA disapproves of, or requires revisions in whole or in part to, any other deliverable
11 or submittal which is not a "major" deliverable or submittal, Respondent shall amend and submit to
12 EPA a revised submittal or deliverable which is responsive to the directions in all EPA comments
13 within (14) days of receiving EPA's comments. Following approval or modification by EPA, all
14 deliverables or submittals shall become incorporated by reference into the Statement of Work and
15 shall be enforceable by EPA through this Consent Order.

16 40. Respondent shall not initiate or proceed further with any activities or tasks required to be
17 performed under or subsequent to the Groundwater Monitoring Plan, the Phase I Work Plan and the
18 RI/FS Work Plan, the Sampling and Analysis Plan, the Draft RI Report, the original and any revised
19 Baseline Risk Assessment prepared by the Respondent, the Treatability Testing Work Plan, and the
20 Draft FS Report until receiving EPA's written approval for that document. While awaiting EPA
21 approval on the deliverables identified in this paragraph, Respondent shall proceed with all other
22 tasks and activities which may be conducted independently of these deliverables, in accordance with
23 the schedule set forth in this Consent Order.

24 41. Upon receipt of the Draft FS Report, EPA will evaluate, as necessary, the estimates of
25 the risk to the public and environment that are expected to remain after a particular remedial
26 alternative has been completed.

1 42. For all remaining deliverables not enumerated above in Paragraph 40, Respondent shall
2 proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval on the
3 submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either
4 temporarily or permanently, on any task, activity, or deliverable at any point during the RI/FS.

5 43. In the event that Respondent amends or revises a report, plan, or other submittal upon
6 receipt of EPA comments, if EPA subsequently disapproves of the revised submittal, or if
7 subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek
8 stipulated or statutory penalties, perform its own studies, complete the RI/FS (or any portion of the
9 RI/FS) under CERCLA and the NCP, and seek reimbursement from Respondent for its costs, and/or
10 seek any other appropriate relief. Respondent reserves all rights consistent with this Order to defend
11 against such actions by EPA.

12 44. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS,
13 Respondent shall incorporate and integrate information supplied by EPA into the Final RI/FS
14 Report. EPA shall share data collected at the Hamilton Road Impacted Area with Respondent in a
15 format consistent with protocols defined in the RI/FS Work Plan for the Local Aquifer Systems.

16 45. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions
17 within a specified time period(s), nor the absence of comments, shall be construed as approval by
18 EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is
19 responsible for preparing deliverables acceptable to EPA.

20 46. Respondent shall, prior to any off-Site shipment of hazardous substances from the Site to
21 an out-of-state waste management facility, provide written notification to the appropriate state
22 environmental official in the receiving state and to EPA's Designated Remedial Project Manager of
23 such shipment of hazardous substances. However, the notification of shipments shall not apply to
24 any such off-Site shipments when the total volume of such shipments will not exceed ten (10) cubic
25 yards.

26 (a) The notification shall be in writing and shall include the following information, where
27 available: (1) the name and location of the facility to which the hazardous substances are to be
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1 shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected
2 schedule for the shipment of the hazardous substances; and (4) the method of transportation.
3 Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision
4 to ship the hazardous substances to another facility within the same state, or to a facility in another
5 state.

6 (b) The identity of the receiving facility and state will be determined by Respondent
7 following the award of the contract for the RI/FS. Respondent shall provide all relevant information,
8 including information under the categories noted in Paragraph 46(a) above, on the off-Site
9 shipments, as soon as practical after the award of the contract and before the hazardous substances
10 are actually shipped.

11 X. BASELINE RISK ASSESSMENT

12 47. Respondent shall perform the Baseline Risk Assessment for the Local Aquifer Systems
13 in accordance with EPA guidance. The major components of the Baseline Risk Assessment include
14 contaminant identification, exposure assessment, toxicity assessment, and human health and
15 ecological risk characterization. EPA retains the right to conduct the Baseline Risk Assessment if
16 Respondent fails to follow the EPA guidance, policies and procedures for performance of a risk
17 assessment at a Superfund Site or if Respondent fails to submit data to EPA in the proper format. In
18 the event that EPA conducts the Baseline Risk Assessment, the Respondent shall support EPA in the
19 effort by providing various information to EPA as requested. If EPA conducts the Baseline Risk
20 Assessment, EPA will provide, after review of the Respondent's Site Characterization Summary,
21 sufficient information concerning the baseline risks such that the Respondent can begin drafting the
22 FS Report. The Baseline Risk Assessment Report prepared by EPA or by the Respondent will be
23 prepared based on the data collected by the Respondent during the Site characterization, and other
24 data as appropriate. EPA will release this report to the public at the same time it releases the Final
25 RI Report. Both reports will be put into the administrative record for the Site. EPA will respond to
26 all significant comments on the Baseline Risk Assessment prepared by EPA or the Respondent that
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1 are submitted during the formal comment period in the Responsiveness Summary of the Record of
2 Decision.

3 XI. MODIFICATION OF THE WORK PLAN

4 48. If at any time during the RI/FS process Respondent identifies a need for additional data,
5 a memorandum documenting the need for additional data shall be submitted to the EPA Remedial
6 Project Manager within fourteen (14) days of identification. EPA, in its discretion, will determine
7 whether the additional data will be collected by Respondent and whether it will be incorporated into
8 reports and deliverables.

9 49. In the event of conditions posing an immediate threat to human health or welfare or the
10 environment, Respondent shall notify EPA and the State immediately. In the event of unanticipated
11 or changed circumstances at the Site, Respondent shall notify the EPA Remedial Project Manager by
12 telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances.
13 In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat
14 or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA may modify
15 or amend the RI/FS Work Plan, in writing. Respondent shall perform the Work Plan as modified or
16 amended.

17 50. EPA may determine that in addition to tasks defined in the initially approved Work Plan,
18 other additional work may be necessary to accomplish the objectives of the RI/FS as set forth in the
19 Statement of Work for this RI/FS. EPA may require that Respondent perform these response actions
20 in addition to those required by the initially approved Work Plan, including any approved
21 modifications, if it determines that such actions are necessary for a complete RI/FS. Respondent
22 shall confirm its willingness to perform the additional work, in writing, to EPA within seven (7) days
23 of receipt of the EPA written request or Respondent shall invoke dispute resolution. Subject to EPA
24 resolution of any dispute, Respondent shall implement the additional tasks that EPA determines are
25 necessary. The additional work shall be completed according to the standards, specifications, and
26 schedule set forth or approved by EPA in a written modification to the Work Plan or written Work
27 Plan Supplement. EPA reserves the right to conduct the work itself at any point, to seek
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1 reimbursement from Respondent, and/or to seek any other appropriate relief. Respondent reserves
2 all rights consistent with this Order to defend against such action.

3 XII. QUALITY ASSURANCE

4 51. Respondent shall assure that work performed, samples taken, and analyses conducted
5 conform to the requirements of the Statement of Work (“SOW”), the Sampling and Analysis Plans
6 (“SAP”), and guidance identified therein. Respondent will assure that field personnel used by
7 Respondent are properly trained in the use of field equipment and in chain-of-custody procedures.
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9 XIII. FINAL RI/FS, PROPOSED PLAN, PUBLIC COMMENT, RECORD OF DECISION,
10 AND ADMINISTRATIVE RECORD

11 52. EPA retains the responsibility for the release to the public of the Final RI/FS Report.
12 EPA retains responsibility for the preparation and release to the public of the Proposed Plan and the
13 Record of Decision in accordance with CERCLA and the NCP.

14 53. EPA shall provide Respondent with the Final RI/FS Report, Proposed Plan, and Record
15 of Decision.

16 54. EPA will determine the contents of the administrative record file for selection of the
17 remedial action. Respondent must submit to EPA documents developed during the course of the
18 RI/FS upon which selection of the response action may be based. Respondent shall provide copies
19 of plans, task memoranda, including documentation of field modifications, recommendations for
20 further action, quality assurance memoranda and audits, validated data, and if requested by EPA, raw
21 data, field notes, laboratory analytical reports, and other reports. Respondent must additionally
22 submit any previous studies conducted under state, local, or other federal authorities relating to
23 selection of the response action and all communications between Respondent and state, local, or
24 other federal authorities concerning selection of the response action. EPA has established a
25 community information repository at the Chehalis Public Library to house one copy of the
26 administrative record.
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XIV. PROGRESS REPORTS AND MEETINGS

55. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion with sufficient notice provided to Respondent to prepare the necessary information.

56. In addition to the deliverables set forth in this Order, Respondent shall provide to EPA monthly progress reports by the tenth (10th) day of the following month. At a minimum, with respect to the preceding month, these progress reports shall: (1) describe the actions which have been taken to comply with this Consent Order during that month; (2) include all QA/QC results of sampling and tests and all other studies conducted or data collected in conjunction with fulfilling the requirements of the Order received by Respondent; (3) describe work planned for the next two (2) months with schedules relating such work to the overall project schedule for RI/FS completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XV. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

57. All final results of sampling, tests, modeling, or other data that conform to the quality assurance and quality control requirements of the RI/FS generated by Respondent, or on Respondent's behalf, during implementation of this Consent Order, shall be submitted to EPA in the subsequent Monthly Progress Report as described in Section XIV of this Order. EPA will make available to Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation. Respondent shall provide raw data as requested by EPA.

58. Respondent will send an electronic mail message to EPA and also verbally notify EPA at least fourteen (14) days prior to conducting significant field events as described in the Statement of Work, Work Plan, or Sampling and Analysis Plan ("SAP"). At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be

1 taken by EPA (and its authorized representatives) of any samples collected by Respondent in
2 implementing this Consent Order. In order to maintain consistency between data sets, Respondent
3 requests that any such split samples taken by EPA be collected in accordance with the SAP and
4 analyzed using the methods identified in the QAPP.

5 59. At all reasonable times, EPA and its authorized representatives shall have the authority
6 to enter and freely move about all property over which Respondent has possession or control at the
7 Site and off-Site areas where work, if any, is being performed, for the purposes of inspecting
8 conditions, activities, the results of activities, records, operating logs, and contracts related to the
9 Site or Respondent and its contractor pursuant to this Order, reviewing the progress of Respondent in
10 carrying out the terms of this Consent Order, conducting tests as EPA or its authorized
11 representatives deem necessary, using a camera, sound recording device, or other documentary type
12 equipment, and verifying the data submitted to EPA by Respondent. Respondent shall allow these
13 persons to inspect and copy all records, files, photographs, documents, sampling and monitoring
14 data, and other writings related to work undertaken in carrying out this Consent Order. Nothing
15 herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under
16 federal law. All parties with access to the Site under this paragraph shall comply with all approved
17 Health and Safety Plans.

18 60. Respondent may assert a claim of business confidentiality covering part or all of the
19 information submitted to EPA pursuant to the terms of this Consent Order under 40 C.F.R. § 2.203,
20 provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This
21 claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time
22 the claim is made. Information determined to be confidential by EPA will be given the protection
23 specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to
24 EPA, it may be made available to the public by EPA or the State without further notice to
25 Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related
26 to Site conditions, sampling, or monitoring collected under this Order or any studies referenced in
27 Paragraph 54 above.

1 61. In entering into this Order, in any proceeding brought by the United States to enforce
2 this Order, Respondent waives any objections to the admissibility of any data gathered, generated, or
3 evaluated by EPA, the State, or Respondent in the performance or oversight of the work that has
4 been verified according to the quality assurance/quality control (“QA/QC”) procedures required by
5 the Consent Order or any EPA-approved Work Plans or Sampling and Analysis Plans. If
6 Respondent objects to any other data relating to the RI/FS, Respondent shall submit to EPA a report
7 that identifies and explains its objections, describes the acceptable uses of the data, if any, and
8 identifies any limitations to the use of the data. The report must be submitted to EPA within
9 fourteen (14) days of Respondent’s receipt of any document containing such data.

10 62. If the Site, or the off-Site area that is to be used for access or is within the scope of the
11 RI/FS, is owned in whole or in part by parties other than those bound by this Consent Order,
12 Respondent will obtain, or use its best efforts to obtain, access agreements from the present owner(s)
13 within forty-five (45) days from the date EPA directs Respondent to obtain such access agreements.
14 If requested by Respondent, EPA will communicate directly with owners or operators of property
15 not owned in whole or in part by Respondent to assist Respondent in obtaining necessary access.
16 Such agreements shall provide access for EPA, its contractors and oversight officials, the State and
17 its contractors, and Respondent or its authorized representatives, and such agreements shall specify
18 that Respondent is not EPA’s representative with respect to liability associated with activities on that
19 property. Copies of such agreements shall be provided to EPA prior to Respondent’s initiation of
20 field activities. Respondent’s best efforts shall include providing reasonable compensation to any
21 off-Site property owner. If access agreements are not obtained within the time referenced above,
22 Respondent shall immediately notify EPA of its failure to obtain access. EPA may obtain access for
23 Respondent, perform those tasks or activities with EPA contractors, or terminate the Consent Order
24 in the event that Respondent cannot obtain access agreements. In the event that EPA performs those
25 tasks or activities with EPA contractors and does not terminate the Consent Order, Respondent shall
26 perform all other activities not requiring access to that property and shall reimburse EPA for all costs
27 incurred in performing such activities that are not inconsistent with the NCP. Respondent
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1 additionally shall integrate, at EPA's direction, the results of any such tasks undertaken by EPA into
2 its reports and deliverables. Furthermore, Respondent agrees to indemnify the United States as
3 specified in Section XXVI of this Order. Respondent also shall reimburse EPA for all costs and
4 attorney fees incurred by the United States to obtain access for Respondent pursuant to Section XV
5 of this Order.

6 XVI. DESIGNATED PROJECT COORDINATORS

7 63. Documents including reports, approvals, disapprovals, and other correspondence which
8 must be submitted under this Consent Order, shall be sent by certified mail, return receipt requested,
9 to the following addressees or to any other addressees which Respondent and EPA designate in
10 writing:

11 (a) Documents to be submitted to EPA (four copies) should be sent to:

12 Bob Kievit
13 EPA Remedial Project Manager
14 Office of Environmental Cleanup
15 U.S. Environmental Protection Agency, Region 10
16 Washington Operations Office
17 300 Desmond Drive S.E., Suite 102
18 Lacey, Washington 98504-7600
19 Email Address: kievit.robert@epa.gov

20 In addition, two copies should be sent to:

21 Panjini Balaraju, P.E.
22 Toxics Cleanup Program
23 State of Washington, Department of Ecology
24 P.O. Box 47775
25 Olympia, Washington 98504-7775

26 In addition, two copies should be sent to:

27 EPA's Oversight Contractor (to be named later).
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1 (b) Documents to be submitted to Respondent should be sent to:

2 Two copies to:

3 Peter Jewett
4 Principal
5 Farallon Consulting, L.L.C.
6 320 3rd Avenue NE, Suite 200
7 Issaquah, Washington 98027

8 One copy to:

9 Tod A. Gold
10 Ogden Murphy Wallace, P.L.L.C
11 1601 Fifth Avenue, Suite 2100
12 Seattle, Washington 98101

13 64. On or before the effective date of this Consent Order, EPA and Respondent shall each
14 designate their own Project Coordinator. Each Project Coordinator shall be responsible for
15 overseeing the implementation of this Consent Order. To the maximum extent possible,
16 communications between Respondent and EPA shall be directed to the Project Coordinator by mail,
17 with copies to such other persons as EPA, the State, and Respondent may respectively designate.
18 Communications include, but are not limited to, all documents, reports, approvals, and other
19 correspondence submitted under this Consent Order.

20 65. EPA and Respondent each have the right to change their respective Project Coordinator.
21 The other party must be notified, in writing, at least ten (10) days prior to the change.

22 66. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project
23 Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project
24 Coordinator shall have the authority consistent with the NCP to halt any work required by this
25 Consent Order and to take any necessary response action when he or she determines that conditions
26 at the Site may present an immediate endangerment to public health or welfare or the environment.
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1 The absence of the EPA Project Coordinator from the area under study pursuant to this Consent
2 Order shall not be cause for the stoppage or delay of work.

3 67. EPA shall arrange for a qualified person to assist in its oversight and review of the
4 conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The
5 oversight assistant may observe work and make inquiries in the absence of EPA but is not authorized
6 to modify the Work Plan or any approved deliverable. Where appropriate, and to the extent
7 practicable, EPA will attempt to implement potential cost-saving practices for reducing oversight
8 costs as described in EPA's "Interim Guidance on Implementing the Superfund Administrative
9 Reform on PRP Oversight," dated May 17, 2000.

11 XVII. OTHER APPLICABLE LAWS

12 68. Respondent shall comply with all laws that are applicable when performing the RI/FS.
13 No local, state, or federal permit shall be required for any portion of any action conducted entirely
14 on-Site, including studies, where such action is selected and carried out in compliance with Section
15 121 of CERCLA, 42 U.S.C. § 9621.

17 XVIII. RECORD PRESERVATION

18 69. All records and documents in EPA's and Respondent's possession that relate in any way
19 to performance of this Consent Order shall be preserved during the conduct of this Consent Order
20 and for a minimum of ten (10) years after commencement of construction of any remedial action.
21 Respondent shall acquire and retain copies of all documents that relate to releases or threatened
22 releases of hazardous substances from Respondent's property, including Respondent's liability
23 therefor, and are in the possession of its employees, agents, accountants, contractors, or attorneys,
24 unless permission has been sought and obtained in writing from EPA prior to destruction of such
25 documents. After this 10-year period, Respondent shall notify EPA at least ninety (90) days before
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1 the documents are scheduled to be destroyed. If EPA requests that the documents be saved,
2 Respondent shall, at no cost to EPA, give EPA the documents or copies of the documents.

3 XIX. DISPUTE RESOLUTION

4 70. Any disputes concerning activities or deliverables required under this Order for which
5 dispute resolution has been expressly provided for shall be resolved as follows: If Respondent
6 objects to any EPA notice of disapproval, requirement for revision, or other requirement made
7 pursuant to this Consent Order, Respondent shall notify EPA's Remedial Project Manager, in
8 writing, of its objections within fourteen (14) days of receipt of the disapproval notice or
9 requirement. Respondent's written objections shall define the dispute, state the basis of
10 Respondent's objections, and be sent certified mail, return receipt requested. EPA and Respondent
11 then have an additional fourteen (14) days to reach agreement. If an agreement is not reached within
12 fourteen (14) days, Respondent may request a determination by EPA Region 10's Director of the
13 Office of Environmental Cleanup ("ECL Director"). Respondent may request to meet with the ECL
14 Director prior to his or her issuance of a decision. The ECL Director's determination is EPA's final
15 decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in
16 dispute, regardless of whether Respondent agrees with the decision. If Respondent does not agree to
17 perform or does not actually perform the work in accordance with EPA's final decision, EPA
18 reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from
19 Respondent, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any
20 other appropriate relief. Respondent reserves all rights consistent with this Order to defend against
21 such action by EPA.

22 71. Respondent is not relieved of its obligations to perform and conduct activities and submit
23 deliverables on the schedule set forth in the Work Plan while a matter is pending in dispute
24 resolution. The invocation of dispute resolution does not stay stipulated penalties under this Order.
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1 Checks should identify the name of the Site, the Site identification number #10-6S, the account
2 number, and the title of this Order. A copy of the check and/or transmittal letter shall be forwarded
3 to the EPA Remedial Project Manager.

4 75. For the following Major Deliverables identified herein and defined in the SOW,
5 stipulated penalties shall accrue in the amount of \$500.00 per day, per violation, for the first 7 days
6 of noncompliance; \$1,000.00 per day, per violation, for the 8th through 14th day of noncompliance;
7 \$2,500.00 per day, per violation, for the 15th day through the 30th day; and \$5,000.00 per day, per
8 violation for all violations lasting beyond thirty (30) days:

- 9 (a) An original and any revised Project Management Plan;
- 10 (b) An original and any revised Drinking Water Monitoring Plan;
- 11 (c) An original and any revised RI/FS Work Plan;
- 12 (d) An original and any revised RI/FS Sampling and Analysis Plan;
- 13 (e) An original and any revised RI/FS Health and Safety Plan;
- 14 (f) An original and any revised RI Report;
- 15 (g) An original and any revised Baseline Risk Assessment;
- 16 (h) An original and any revised Treatability Testing Work Plan;
- 17 (i) An original and any revised Treatability Study Sampling and Analysis Plan; and
- 18 (j) An original and any revised FS Report.

19 76. For the following Interim Deliverables identified herein and defined in the SOW,
20 stipulated penalties shall accrue in the amount of \$100.00 per day, per violation, for the first week of
21 noncompliance; \$200.00 per day, per violation, for the 8th through 14th day of noncompliance;
22 \$500.00 per day, per violation, for the 15th day through the 30th day of noncompliance; and
23 \$1,000.00 per day per violation for all violations lasting beyond thirty (30) days:

- 24 (a) An original and any revised Phase I Work Plan;
- 25 (b) An original and any revised Phase I Sampling and Analysis Plan;
- 26 (c) An original and any revised Phase I Health and Safety Plan;
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1 (d) An original and any revised Technical Memorandum on Modeling of Local
2 Aquifer Systems Characteristics;

3 (e) An original and any revised Technical Memorandum: Thurman Well;

4 (f) An original and any revised Letter Reports Regarding Private Water Supply Wells
5 Sampling Results;

6 (g) An original and any revised Drinking Water Monitoring Results Reports;

7 (h) An original and any revised Technical Memoranda on Source Control/Plume
8 Reduction Early Actions;

9 (i) An original and any revised Preliminary Site Characterization Summary;

10 (j) An original and any revised Treatability Testing Health and Safety Plan;

11 (k) An original and any revised Treatability Study Evaluation Report;

12 (l) An original and any revised Technical Memorandum on Revised Preliminary
13 Remediation Goals; and

14 (m) An original and any revised Memorandum on Alternatives Development and
15 Screening and Comparative Analysis Report.

16 77. For the Monthly Progress Reports, stipulated penalties shall accrue in the amount of
17 \$100.00 per day, per violation, for the first week of noncompliance; \$200.00 per day, per violation,
18 for the 8th through 14th day of noncompliance; \$300.00 per day, per violation, for the 15th day
19 through the 30th day; and \$500.00 per day, per violation, for all violations lasting beyond thirty
20 (30) days.

21 78. Respondent may dispute EPA's right to the stated amount of penalties by invoking the
22 dispute resolution procedures under Section XIX herein. Penalties shall accrue, but need not be paid,
23 during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties
24 shall be due to EPA within thirty (30) days of resolution of the dispute. If Respondent prevails upon
25 resolution, no penalties shall be paid.

1 79. In the event that EPA provides for corrections to be reflected in the next deliverable and
2 does not require resubmission of that deliverable, stipulated penalties for that interim deliverable
3 shall cease to accrue on the date of such decision by EPA.

4 80. The stipulated penalties provisions do not preclude EPA from pursuing any other
5 remedies or sanctions which are available to EPA because of Respondent's failure to comply with
6 this Consent Order including, but not limited to, conduct of all or part of the RI/FS by EPA.
7 Payment of stipulated penalties does not alter Respondent's obligation to complete performance
8 under this Consent Order.

9 XXI. FORCE MAJEURE

10 81. "Force Majeure," for purposes of this Consent Order, is defined as any event arising
11 from causes entirely beyond the control of Respondent and of any entity controlled by Respondent,
12 including their contractors and subcontractors, that delays the timely performance of any obligation
13 under this Consent Order notwithstanding Respondent's best efforts to avoid the delay. The
14 requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to
15 anticipate any potential Force Majeure event and best efforts to address the effects of any potential
16 Force Majeure event (1) as it is occurring, and (2) following the potential Force Majeure event, such
17 that the delay is minimized to the greatest extent practicable. Examples of events that are not Force
18 Majeure events include, but are not limited to, increased costs or expenses of any work to be
19 performed under this Order or the financial difficulty of Respondent to perform such work.

20 82. If any event occurs or has occurred that may delay the performance of any obligation
21 under this Order, whether or not caused by a Force Majeure event, Respondent shall notify, by
22 telephone, the Remedial Project Manager or, in his or her absence, the Unit Manager for the
23 Remedial Project Manager in the EPA Region 10 Office of Environmental Cleanup within forty-
24 eight (48) hours of when Respondent knew or should have known that the event might cause a delay.
25 Within seven (7) business days thereafter, Respondent shall provide, in writing, the reasons for the
26 delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize
27 the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the
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1 delay, and a statement as to whether, in the opinion of Respondent, such event may cause or
2 contribute to an endangerment to public health, welfare, or the environment. Respondent shall
3 exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply
4 with the above requirements shall preclude Respondent from asserting any claim of Force Majeure.

5 83. If EPA agrees that the delay or anticipated delay is attributable to Force Majeure, the
6 time for performance of the obligations under this Order that are directly affected by the Force
7 Majeure event shall be extended by EPA for such time as EPA determines is necessary to complete
8 those obligations, but any such extension of time shall not exceed the actual duration of the delay
9 caused by the Force Majeure event. An extension of the time for performance of the obligation
10 directly affected by the Force Majeure event shall not, of itself, extend the time for performance of
11 any subsequent obligation.

12 84. If EPA does not agree that the delay or anticipated delay has been or will be caused by a
13 Force Majeure event or does not agree with Respondent on the length of the extension, the issue
14 shall be subject to the dispute resolution procedures set forth in Section XIX of this Order. In any
15 such proceeding, to qualify for a Force Majeure defense, Respondent shall have the burden of
16 demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or
17 will be caused by a Force Majeure event, that the duration of the delay was or will be warranted
18 under the circumstances, that Respondent did exercise or is exercising due diligence by using its best
19 efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the
20 requirements of Paragraph 82.

21 85. Should Respondent carry the burden set forth in Paragraph 84, the delay at issue shall be
22 deemed not to be a violation of the affected obligation of this Consent Order.

23 XXII. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

24 86. Following the issuance of this Consent Order, EPA shall submit to Respondent on a
25 periodic basis an accounting of all response costs including oversight costs incurred by the United
26 States on and after the effective date of this Order with respect to this RI/FS. Response costs may
27 include, but are not limited to, costs incurred by the United States in overseeing Respondent's
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1 implementation of the requirements of this Order and activities performed by the government as part
2 of the RI/FS and community relations, including any costs incurred while obtaining access. Costs
3 shall include all direct and indirect costs including, but not limited to, time and travel costs of EPA
4 personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance
5 monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, Site
6 visits, discussions regarding disputes that may arise as a result of this Consent Order, review and
7 approval or disapproval of reports, costs incurred by EPA in the event it conducts the Baseline Risk
8 Assessment, EPA's costs in preparing the Proposed Plan, the Record of Decision, and the Response
9 to Comment, and costs of redoing any of Respondent's tasks. Any necessary summaries including,
10 but not limited to, EPA's certified SCORPIOS Cost Report, or such other summary as certified by
11 EPA, shall serve as basis for payment demands. Respondent may review upon request the
12 underlying EPA oversight cost documentation that is readily available to EPA and which can be
13 readily provided to the Respondent, such as: EPA personnel time sheets; travel authorizations and
14 vouchers; vouchers for contract payments; and supporting documentation for miscellaneous
15 payments. However, if the Respondent requests this documentation specified above, this request
16 will not delay or extend the requirement that Respondent must pay EPA's oversight cost bill within
17 sixty (60) days of Respondent's receipt of the accounting nor will such a request suspend the accrual
18 of Interest as specified in Paragraph 88 below.

19 87. Using the procedures specified in this Paragraph, EPA agrees to credit the Respondent
20 for the costs Respondent incurs as a result of sampling and analysis work required by EPA and/or
21 the RI/FS Work Plan that is conducted within the Hamilton Road Impacted Area. However, if EPA
22 determines that Respondent is liable under CERCLA for the source area(s) at the Hamilton Road
23 Impacted Area, then Respondent is no longer entitled to any such credit and Respondent shall
24 reimburse EPA for any such credit already received from EPA, plus Interest on such amounts
25 previously credited, within thirty (30) days of receipt of written notice from EPA that such credited
26 amounts are due and payable to EPA. Such sampling and analysis work may include, among other
27 things, collection and analysis of environmental media samples such as surface water, groundwater,
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1 and/or any other samples from selected areas within the Hamilton Road Impacted Area. With
2 respect to such sampling and analysis work:

3 (a) Respondent shall, on an annual basis, provide an accounting and supporting
4 documentation of the costs Respondent incurs in conducting this sampling and analysis work within
5 the Hamilton Road Impacted Area. Such accounting and supporting documentation must contain
6 information to prove that work was authorized by this AOC and SOW, that such work was
7 completed, that costs were actually incurred, and that such costs were paid by the Respondent.

8 Examples of such documentation include, but are not limited to, invoices or other similar
9 documentation which identify the work to be performed, how such work was performed, what the
10 costs were to perform such work, and proof of payment of such invoices or other similar
11 documentation. For purposes of determining creditable expenditures, EPA will not require
12 Respondent's cost documentation to strictly adhere to requirements for work performed under EPA
13 contracts; however, Respondent's cost documentation must be clear, concise, and adhere to usual
14 and customary best business and accounting practices and include the information and
15 documentation described above in this paragraph;

16 (b) EPA shall review this documentation and accounting and shall determine the amount
17 of creditable expenditures that the Respondent shall receive for this work; and

18 (c) The amount of creditable expenditures that EPA approves shall be credited against
19 the amount of oversight costs incurred by EPA in overseeing Respondent's performance of the Work
20 required in the SOW, and this adjusted amount of EPA oversight costs shall be billed to the
21 Respondent in accordance with Section XXII of this Order. However, in no event shall the amount
22 of creditable expenditures that Respondent receives in any year exceed the amount of oversight costs
23 EPA incurred in that same year, nor shall any creditable expenditures "carry over" to any subsequent
24 oversight billing period. Nothing in the SOW or in this Order shall constitute a preauthorization of a
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1 claim by the Respondent or any other party against the Hazardous Substances Superfund under
2 Section 106(b) of CERCLA.

3 88. Respondent shall, within sixty (60) days of receipt of each accounting, remit a certified
4 or cashier's check for the amount of EPA's oversight costs. If Respondent fails to pay those costs
5 within sixty (60) days of Respondent's receipt of each accounting, Respondent shall pay Interest on
6 the unpaid balance. The Interest to be paid on those costs shall begin to accrue on the date of the
7 accounting. The Interest shall accrue through the date of Respondent's payment. The interest rate is
8 the rate of interest on investments for the Hazardous Substances Superfund in Section 107(a) of
9 CERCLA, 42 U.S.C. § 9607(a). Payments of Interest made under this Paragraph shall be in addition
10 to such other remedies or sanctions available to EPA by virtue of Respondent's failure to make
11 timely payments under this Section. Respondent shall make all payments required by this Section in
12 the manner described in Paragraph 89, below.

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15 89. Checks should be made payable to the Hazardous Substances Superfund and should
16 include the name of the Site, the Site identification number #10-6S, the account number and the title
17 of this Order. Checks should be forwarded to:

18
19 Mellon Bank
20 U.S. Environmental Protection Agency – Region 10
21 3 Mellon Bank Center
22 P.O. Box 360903M, Superfund
23 Pittsburgh, Pennsylvania 15251

24 90. Copies of the transmittal letter and check should be sent simultaneously to the EPA
25 Remedial Project Manager.

26 91. Respondent agrees to limit any disputes concerning costs to accounting errors, the
27 inclusion of costs outside the scope of this Consent Order, and EPA's determination of creditable
28 expenditures. Any disputes regarding payment of costs shall be governed by the resolution
procedures of Section XIX of this Order. Respondent shall identify any contested costs and the basis

1 of its objection. All undisputed costs shall be remitted by Respondent in accordance with the
2 schedule set forth above. Disputed costs shall be paid by Respondent into an escrow account while
3 the dispute is pending. Respondent bears the burden of establishing an EPA accounting error or the
4 inclusion of costs outside the scope of this Consent Order or that EPA's determination of creditable
5 expenditures was in error.

7 XXIII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

8 92. EPA reserves the right to bring an action against Respondent under Section 107 of
9 CERCLA, 42 U.S.C. § 9607, for recovery of all response costs, including past costs and oversight
10 costs incurred by the United States at this Site that are not reimbursed by Respondent, any costs
11 incurred in the event that EPA performs the RI/FS or any part thereof, and any future costs incurred
12 by the United States in connection with response activities conducted under CERCLA at this Site
13 that Respondent is potentially liable for under CERCLA.

14 93. EPA reserves the right to bring an action against Respondent to enforce the response and
15 oversight cost reimbursement requirements of this Consent Order, to collect stipulated penalties
16 assessed pursuant to Section XX of this Consent Order, and to seek penalties pursuant to Section 109
17 of CERCLA, 42 U.S.C. § 9609.

18 94. Except as expressly provided in this Order, each party reserves all rights and defenses it
19 may have. Respondent reserves the right to assert any applicable attorney-client or attorney work
20 product privilege for any document requested by EPA pursuant to this Order and EPA reserves the
21 right to challenge any such privilege asserted by Respondent. Respondent agrees that it will only
22 assert such privileges in good faith, and Respondent agrees that it will not assert any privileges
23 whatsoever regarding data generated pursuant to this Order.
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1 95. Nothing in this Consent Order shall affect EPA's removal authority or EPA's response
2 or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated
3 penalties, statutory penalties, and/or punitive damages.

4 96. Following satisfaction of the requirements of this Consent Order, Respondent shall have
5 resolved its liability to EPA for the work performed by Respondent pursuant to this Consent Order.
6 Respondent is not released from liability, if any, for any response actions taken beyond the scope of
7 this Order regarding site assessment work, removals, remedial design/remedial action, or activities
8 arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

10 XXIV. DISCLAIMER

11 97. By signing this Consent Order and taking actions under this Order, Respondent does not
12 necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the
13 participation of Respondent in this Order shall not be considered an admission of liability and is not
14 admissible in evidence against Respondent in any judicial or administrative proceeding other than a
15 proceeding by the United States, including EPA, to enforce this Consent Order or a judgment
16 relating to it. Respondent retains all defenses consistent with this Order to actions taken by EPA and
17 otherwise reserves all rights to assert claims against other potentially responsible parties at the Site.
18 However, Respondent agrees not to contest the validity or terms of this Order, or the procedures
19 underlying or relating to it in any action brought by the United States, including EPA, to enforce its
20 terms.
21

23 XXV. OTHER CLAIMS

24 98. In entering into this Order, Respondent waives any right to seek reimbursement under
25 Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). Respondent also waives any right to present a
26 claim under Section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612. This Order does not
27 constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C.
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1 § 9611(a)(2). Respondent further waives all other statutory and common law claims against EPA
2 including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of
3 the RI/FS.

4 99. Nothing in this Order shall constitute or be construed as a release from any claim, cause
5 of action, or demand in law or equity against any person, firm, partnership, subsidiary, or
6 corporation not a signatory to this Consent Order for any liability it may have arising out of, or
7 relating in any way to, the generation, storage, treatment, handling, transportation, release, or
8 disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from
9 the Site.

10
11 100. Respondent shall bear its own costs and attorney fees.

12 **XXVI. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION**

13
14 101. Respondent's insurance carrier, SAFECO Insurance Company ("Safeco"), has provided
15 written notice to Respondent that Safeco will fund the RI/FS work required by this Consent Order
16 and the attached SOW, as modified. However, in the event that Safeco terminates funding of the
17 RI/FS work for any reason whatsoever, then the following financial assurance provisions of this
18 Order shall become immediately enforceable against the Respondent:

19
20 (a) Respondent shall establish and maintain a financial instrument or trust account or other
21 financial mechanism acceptable to EPA, funded sufficiently to perform the remaining work
22 and any other obligations required under this Consent Order, including a margin for cost
23 overruns. Within 15 days after the effective date of this Consent Order or within 15 days
24 after receipt of notice from Safeco that Safeco is terminating funding of the RI/FS work,
25 whichever is later, and on or before the 15th calendar day of each calendar year quarter
26 thereafter, Respondent shall fund the financial instrument or trust account sufficiently to
27 perform all of the work required under this Consent Order projected for the succeeding
28 calendar year quarter;

1 (b) If at any time the net worth of the financial instrument or trust account is insufficient to
2 perform the work and other obligations under the Order for the upcoming quarter,
3 Respondent shall provide written notice to EPA within seven (7) days after the net worth of
4 the financial instrument or trust account becomes insufficient. The written notice shall
5 describe why the financial instrument or trust account is funded insufficiently and explain
6 what actions have been or will be taken to fund the financial instrument or trust account
7 adequately.

8 102. Prior to commencement of any work under this Order, Respondent shall demonstrate by
9 evidence satisfactory to EPA that any contractor or subcontractor that will perform Work at the Site
10 has secured, and will maintain in force for the duration of this Order and for two (2) years after the
11 completion of all activities required by that contractor or subcontractor under this Consent Order, the
12 following insurance coverage:

13 (a) Comprehensive General Liability (“CGL”) and automobile insurance, with limits
14 of \$5 million dollars, combined single limit, naming as insured the United States. The CGL
15 insurance shall include Contractual Liability Insurance in the amount of \$1,000,000.00 per
16 occurrence with a \$5 million aggregate.

17 (b) Professional Errors and Omissions Insurance in the amount of \$1,000,000.00 per
18 occurrence.

19 (c) Pollution Liability Insurance in the amount of \$1,000,000.00 per occurrence,
20 covering as appropriate both general liability and professional liability arising from pollution
21 conditions.

22 103. If a contractor or subcontractor fails to secure or maintain acceptable insurance
23 coverage, Respondent shall be responsible for securing and maintaining acceptable insurance
24 coverage for Work that is performed at the Site.

25 104. For the duration of this Order, Respondent shall satisfy, or shall ensure that its
26 contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of
27 employer’s liability insurance and workmen’s compensation insurance for all persons performing
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1 work on behalf of Respondent, in furtherance of this Order. Prior to commencement of any work
2 under this Order, and annually thereafter on the anniversary of the effective date of this Order,
3 Respondent shall provide EPA certificates of such insurance.

4 105. Respondent agrees to indemnify and hold the United States Government, its agencies,
5 departments, agents, and employees harmless from any and all claims or causes of action arising
6 from or on account of acts or omissions of Respondent, its employees, agents, servants, receivers,
7 successors, or assignees, or any persons including, but not limited to, firms, corporations,
8 subsidiaries, and contractors in carrying out activities under this Consent Order. The United States
9 Government or any agency or authorized representative thereof shall not be held as a party to any
10 contract entered into by Respondent in carrying out activities under this Consent Order.

11 XXVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

12 106. The effective date of this Consent Order shall be the date it is signed by EPA.

13 107. This Consent Order may be amended by mutual agreement of EPA and Respondent.
14 Amendments shall be in writing and shall be effective when signed by EPA. EPA Remedial Project
15 Managers do not have the authority to sign amendments to this Consent Order but they may agree to
16 modifications of the Statement of Work and any work plans produced under the Statement of Work.

17 108. No informal advice, guidance, suggestions, or comments by EPA regarding reports,
18 plans, specifications, schedules, and any other writing submitted by Respondent will be construed as
19 relieving Respondent of its obligation to obtain such formal approval as may be required by this
20 Order. Any deliverables, plans, technical memoranda, reports (other than progress reports),
21 specifications, schedules, and attachments required by this Consent Order are, upon approval by
22 EPA, incorporated into this Order.

23 XXVIII. TERMINATION AND SATISFACTION

24 109. This Consent Order shall terminate when Respondent demonstrates, in writing, and
25 certifies to the satisfaction of EPA that all activities required under this Consent Order, including any
26 additional work, payment of response and oversight costs, and any stipulated penalties demanded by
27 EPA, have been performed and EPA has approved the certification. This notice shall not, however,
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1 terminate Respondent's obligation to comply with Sections XVII, XVIII, and XXII of this Consent
2 Order.

3 110. The certification shall be signed by a responsible official representing the Respondent.
4 The Respondent's representative shall make the following attestation: "I certify that the information
5 contained in or accompanying this certification is true, accurate, and complete." For purposes of this
6 Consent Order, a responsible official is a corporate official who is in charge of a principal business
7 function.
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9 XXIX. SIGNATORIES

10
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12
13 BY: _____
14 Harvey Breen, Vice President
15 S. C. Breen Construction Company
16

DATE: _____

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18
19 BY: _____
20 Michael F. Gearheard, Director
21 Office of Environmental Cleanup
22 U.S. Environmental Protection Agency, Region 10
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DATE: _____